



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 620**

IN THE MATTER OF CAROLE FOLEY

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Carole Foley pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On April 22, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A by Foley. The Commission has concluded the inquiry and, on June 21, 2000, found reasonable cause to believe that Foley violated G.L. c. 268A.

The Commission and Foley now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Foley, a licensed social worker, has been a paid, appointed Town of Dedham Council on Aging ("OA") outreach worker since 1995.
2. As a COA outreach worker, Foley provides assistance and advice to elderly citizens, especially those who do not have family or friends available to provide such assistance and advice. Sometimes, upon request, Foley assists an elderly client to find a more suitable living arrangement and sell his or her home. Typically, Foley helps the client to find a real estate agent and an attorney. In addition, when people in town approach Foley about buying a home which is being sold by one of her elderly clients, Foley usually refers the potential buyer to the seller or the real estate agent.
3. In summer 1998, Marie Manning was a 60-year-old woman who lived alone in a three-bedroom house in Dedham. Unemployed and suffering from acute depression and cancer, Manning no longer was able to take care of herself or her home.
4. On July 4, 1998, one of Manning's neighbors became concerned after not having seen Manning in some time and noticing that Manning's mail was piling up. The neighbor contacted the police, who spoke with Manning later that day. Although Manning declined any help, the police were concerned about her condition.

5. On Tuesday, July 7, 1998, a police officer returned to Manning's home with Foley, who was acting in her capacity as COA outreach worker. Upon observing Manning and the poor sanitary conditions in which she was living, Foley persuaded Manning to allow herself to be taken to Norwood Hospital for treatment.
6. On July 10, 1998, Foley accompanied a board of health inspector on an inspection of Manning's house. By letter dated July 13, 1998, the inspector informed Manning that the house inspection had revealed a number of state sanitary code violations, including serious structural deficiencies, exposed wiring, broken windows and clutter throughout the house.
7. During the week of July 13, 1998, Foley contacted Manning's brother Edward in New Jersey. Manning had not been in contact with Edward for many years. Foley asked Edward for a letter authorizing Foley to handle Manning's affairs in case Foley became medically unable to do so. By letter dated July 17, 1998, Edward gave Foley that authority. (Foley never had to use the letter, however.)
8. In mid-July, Foley visited Manning at the hospital, bringing her clothes and mail. According to Foley, Manning told Foley that she had only a short time to live and wanted to sell her house. Because Manning could no longer live alone in her house, Foley agreed to find a nursing home that would accept Manning and to help Manning sell her house.
9. The hospital's records indicate that, at the time, although clinically depressed, Manning was mentally oriented and understood her medical situation.
10. Shortly thereafter, Foley contacted the Eastwood Care Center, a long-term nursing home facility. Eastwood's director of admissions interviewed Manning and determined that a long-term placement at Eastwood was clinically appropriate. Medicaid would cover the nursing home costs for Manning.
11. On July 30, 1998, Norwood Hospital transferred Manning to Eastwood.
12. On or about July 31, 1998, Foley visited Manning at Eastwood and discussed selling her house. Manning stated that she would be willing to sell the house for \$7,000 plus any back taxes and utilities that were due.
13. According to the Assessor's Office, for fiscal year 1999 Manning's three bedroom home situated on approximately one-quarter acre was assessed at \$121,000; the lot alone was valued at \$79,000.
14. At the time, Foley's son, Russell, and daughter-in-law, Debbie, lived in Dedham and were looking to buy a home.
15. Shortly after speaking with Manning about selling her house, Foley had a telephone conversation with either Russell or Debbie in which Foley related that she had a client at Eastwood who was interested in selling her home. Foley explained that the house was in poor condition and might be of interest to them.
16. Shortly thereafter, either Russell, Debbie or both of them drove by the house and confirmed that it was in poor condition but had potential.
17. On August 4, 1998, Foley introduced Debbie to Manning at Eastwood. Foley did not disclose to Manning that Debbie was her daughter-in-law.

18. At about this time, Foley asked Manning's brother Edward to speak with Manning and try to influence her to sell the house to Russell and Debbie.
19. Sometime during the week of August 9, 1998, Foley told Dedham COA Director Joanne Mucciaccio that Manning had been placed in a nursing home and that Russell and Debbie were interested in buying her home. Mucciaccio told Foley that it was a "no-no" for Foley's son and daughter-in-law to be so involved. Mucciaccio told Foley to have an attorney and three realtors involved in the transaction to make sure that nothing went wrong, and that Foley herself should have no further involvement. Foley did not disclose any sales price nor did she reveal that she had introduced Debbie to Manning.
20. The COA has no written policy regarding how a social worker is supposed to deal with a client who needs assistance in selling property. Standard protocol, however, dictates that the social worker seek the assistance of a realtor and an attorney to advise the client. Indeed, Foley's own practice in dealing with such situations had been to involve outside professionals.
21. In the case of Manning's house, however, Foley never involved an attorney or real estate agent in the process, nor did she take any steps to find other interested buyers for the property.
22. On or about August 11, 1998, Foley's son and daughter-in-law entered into a purchase and sale agreement with Manning to buy the house for \$7,000 (plus the assumption of unpaid taxes and utility bills up to an additional \$3,000).
23. In late August 1998, one of Manning's neighbors complained to town officials about the sale of Manning's house to Foley's son and daughter-in-law. At the town administrator's suggestion, Eastwood arranged to have a legal services attorney appointed to protect Manning's interests in the disposition of her property.
24. By letter dated September 4, 1998, Manning's attorney wrote to Russell and Debbie's attorney stating, "The sale to the Foleys is presently on hold pending further review of the sale price for the property." Manning's attorney then contacted a contractor, who offered \$90,000 for the property. Russell and Debbie declined to bid against that offer.
25. The contractor purchased the property on December 31, 1999, for \$90,000.
26. Manning died on January 16, 1999.

Conclusions of Law

27. As a COA outreach worker, Foley is a municipal employee as defined in G.L. c. 268A, §1. As such, Foley is subject to the provisions of the conflict of interest law, G.L. c. 268A.
28. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use her official position to secure for herself or others unwarranted privileges¹ or exemptions of substantial value which are not properly available to similarly situated individuals.
29. Foley's introducing her daughter-in-law to Manning under the above-described circumstances and her failure to bring in an attorney and/or realtor involved a use of her official position because in each situation she was acting as a COA outreach worker to bring about the result. Thus, Foley was able to make the introduction because she was Manning's outreach worker. And, in deciding not to involve other professionals, Foley was obviously exercising her authority as an outreach worker.

30. Foley's introducing her daughter-in-law to Manning and failing to involve other professionals gave her son and daughter-in-law special advantages. First, the introduction carried with it Foley's implied endorsement of Russell and Debbie as Manning's COA outreach worker. Presumably, Manning would have a certain degree of trust in her outreach worker's judgment as to who would be an appropriate buyer. Second, by failing to involve other professionals (such as contacting realtors), Foley gave her son and daughter-in-law the special advantage of not having to compete against any other buyers. Similarly, by failing to retain a real estate agent or an attorney for Manning, Foley gave her son and daughter-in-law the special advantage of being able to respond to an extraordinarily low price (\$7,000 plus outstanding bills) that was not, in effect being scrutinized by independent professionals. These special advantages were privileges within the meaning of §23(b)(2).

31. The privileges were of substantial value because the endorsement, the lack of competition from other buyers and the absence of outside professional scrutiny made it more likely Foley's son and daughter-in-law would be able to buy the property at Manning's bargain asking price.^{2/}

32. Foley's implied endorsement of her son and daughter-in-law was unwarranted because Foley should not having been using her official position to promote her own family's interests. Foley's failure to retain outside professionals, an attorney and a real estate broker, was unwarranted because standard practice would dictate that such professionals be involved, especially for a client in such an inherently exploitable situation.

33. These unwarranted privileges were not properly available to individuals situated similarly to Foley's son and daughter-in-law. In other words, there was no statute, ordinance, practice or protocol that would make it appropriate for a social worker's family members to, in effect, have an exclusive purchasing opportunity with the social worker's client.^{3/}

34. Accordingly, by making this introduction and failing to involve outside professionals who would protect Manning's interests, Foley knowingly or with reason to know used her official position to secure unwarranted privileges of substantial value for her son and daughter-in-law. In so doing, Foley violated G.L. c. 268A, §23(b)(2).^{4/}

Resolution

In view of the foregoing violations of G.L. c. 268A by Foley, the Commission has determined that the public interest would be served by the disposition of the matter without further enforcement proceedings, on the basis of the following terms and conditions agreed upon by Foley:

(1) that Foley pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, §23(b)(2); and

(2) that Foley waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: April 23, 2001

¹/As defined in The American Heritage Dictionary (second college ed.), a privilege is “A special advantage, immunity, permission, right or benefit granted to an individual, class or caste.”

²/The Commission construes substantial value to mean or include any item or service with a value of \$50 or more. *Liam v. State Ethics Commission*, 431 Mass. 1002, 1003 (2000).

³/Public employees are prohibited by the conflict of interest law from taking private advantage of inherently exploitable relationships that they have with those persons they supervise or regulate in their official positions. *See In re Corson*, 1998 SEC 912; *see also In re Shay*, 1992 SEC 591.

⁴/This same conduct raises issues under G.L.c. 268A, ?19. Section 19 prohibits a municipal employee from participating as such in a particular matter in which she knows that an immediate family member, among others, has a financial interest. In settling this case, however, the Commission has chosen to focus exclusively on the extent to which the conduct involved unwarranted privileges.